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National Highway Traffic Safety Administration
Docket Management
Room PL-401
400 Seventh Street, S.W.
Washington, DC 20590

Re: Docket No. NHTSA 2001-8677; Notice 1; – 33
Advance Notice of Proposed Rulemaking, Early Warning Reporting

Dear Sir or Madam:

This comment is submitted responsive to the above-captioned advance notice of proposed rulemaking (ANPRM) on behalf of the Motor and Equipment Manufacturers Association (MEMA) and the Original Equipment Suppliers Association (OESA) (or, collectively, the Associations), which this firm serves as counsel.[1]

Summary of Comment

MEMA and OESA urge that the initial reporting rule not be applied to the motor vehicle equipment industry segment. The small business constituency of the vehicle equipment industry, especially in the equipment replacement market, is substantial. Any reporting burdens on these "small entities" will require careful economic impact analysis.

As well, large and small suppliers of original equipment (both components and vehicle systems) either do not have the kinds of information NHTSA has suggested it needs in the ANPRM, or otherwise are under a contractual obligation to supply such data to their respective vehicle manufacturer customers on a basis proprietary to the latter.

The Associations believe that a pilot undertaking of the early warning reports rule to assess its applications and limitations with respect to vehicle manufacturer reporting, without vehicle equipment producer involvement in the initial stage, could well serve the public interest and the Congressional mandate "not to impose requirements unduly burdensome . . . , taking into account the manufacturer's cost of complying . . . and [NHTSA's] ability to use the information . . . to assist in the identification of defects related to motor vehicle safety."

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[1] **MEMA** exclusively represents and serves more than 700 North American manufacturers of motor vehicle components, tools and equipment, automotive chemical and related products used in the manufacture, repair and maintenance of all classes of motor vehicles. MEMA, headquartered in Research Triangle Park, N.C., has offices in Washington, D.C.; Kansas City, Mo.; Yokohama, Japan; Brussels, Belgium; Mexico City, Mexico; and Sao Paulo, Brazil. **OESA**, with offices in Troy, Michigan, is MEMA's affiliate association exclusively serving as a voice for the original equipment supplier industry. OESA represents over 260 automotive suppliers, with global automotive sales of $280 billion.

MEMA and OESA are concerned that much of what the agency believes it needs in the way of early warning reports will consist of "raw data," unsubstantiated claims and other unconfirmed information. It is essential to the industry and to the public as well that NHTSA develop internal processes to safeguard such information from being released into public records unless the agency has, through analysis or investigation, confirmed its accuracy.

1. Early Warning Reports Rule Application to the Motor Vehicle Equipment Industry Should Be Deferred

In its ANPRM, NHTSA recognizes that some 14,000 parts and components produced not only by direct original equipment (Tier 1) suppliers but also by several additional levels of manufacturers are involved in the production of a passenger car. The number of parts and parts producer universes increase exponentially when one includes original equipment items supplied for heavy, multiple stage and special use vehicles. These numbers mushroom even more when replacement or aftermarket parts and their producers are factored into the motor vehicle equipment supply chain.

In all, there are approximately 1300 independent Tier 1 U.S. based manufacturers of original equipment producing or assembling parts, components or modules for the domestic motor vehicle market. *Elm Guide to U.S. Automotive Sourcing (2000)* (hereafter the "Elm Guide"). The foreign supplier base would add to this figure, which also excludes a substantial number of Tier 2 and lower tier U.S. manufacturers supplying parts or components upward in the channel toward the Tier 1 group. Aftermarket manufacturers (U.S. and foreign into the U.S.), some of which also supply the original equipment market, number in the thousands and have product offerings totaling in the hundreds of thousands of items to repair and maintain in operation a U.S. fleet of vehicles that exceeds 200 million and spans several decades of models. Some of the Tier 1 manufacturers, as well as a large portion of the sub-Tier 1 suppliers and aftermarket parts producers, are "small entities," as will be discussed below.

If the early warning reporting rule is not sharply focused and properly managed, the weight of the reporting burdens on the vehicle equipment industry, and attendant burdens on NHTSA to collect and review industry data, will assuredly overwhelm all concerned. The agency appears to recognize this in suggesting that, "it may be more effective to adopt an incremental approach, and initially to require reports from manufacturers of only a relatively small number of original or replacement equipment items." (66 *Fed. Reg.* at 6536.) For the reasons as discussed, MEMA and OESA urge that the periodic reporting category of motor vehicle parts and equipment manufacturers be deferred, at least in the initial rule.

Benchmarking the frequency of vehicle equipment safety defect recall reports for the years 1995-2000, NHTSA has tentatively concluded that it might initially require periodic reports from:

> . . . original equipment manufacturers of tires, child restraint systems, fuel tanks, seat belt assemblies, air bags and related components, and axle, suspension and brake components on heavy trucks and trailers; and
>
> . . . replacement equipment manufacturers of seat belt assemblies, air bags and related components, including sensors.
>
> *See* 66 *Fed. Reg.* at 6536-6537.[2]

In significant part, the agency's vehicle equipment reporting orientation appears to be an "assembly" approach. Whether or not this is the case, MEMA and OESA recommend that a more limited initial approach and category refinements can and should be made.

Using the NHTSA five year recall experience, early warning reporting would likely have made little difference with respect to heavy vehicle brake and axle/suspension system recalls. MEMA and OESA, on the basis of member surveys, believe that a number of these recalls were manufacturer-initiated on a voluntary basis, and not influenced by NHTSA inquiries. While this is not dispositive with respect to reporting coverage, there are other relevant issues which the agency should also consider.

a. <u>Small business constituency</u>

A very large number of vehicle parts and equipment manufacturers are small businesses. Contrary to the ANPRM (66 *Fed. Reg.* at 6544), the motor vehicle equipment industry has a substantial number of "small entities" of 750 or fewer employees, as delineated in the Small Business Administration's Small Business Size Regulations, 13 CFR §121.201.[3] MEMA, which has member company survey categories for companies with up to 400 employees, and 401-800 employees (with additional survey categories for larger members), advises the agency that more than 50 percent of its 700 members have 400 or fewer employees, and nearly 75 percent of its member companies have 800 employees or less. (*MEMA Annual Executive Compensation and Benefits Study* (2000).) To this should be added a significant group of industry "small entities" which are not members of MEMA.

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[2] Since the suggested original and replacement equipment reporting distinction is unclear in the text of the ANPRM, for comment purposes here MEMA and OESA will treat all the products in NHTSA's suggested first level reporting list as both original and replacement equipment items.

[3] Application of the early warning reports rule to a broad range of vehicle equipment manufacturers would likely involve a significant number of smaller companies and require a detailed analysis under the Regulatory Flexibility Act. 5 U.S.C. §601 *et seq.*

Within the OESA membership there are some 35 original equipment manufacturers which are within the "small entity" category. (OESA membership records.)

While from available industry data it is difficult to break down small entity statistics for each of the potential first reporting level vehicle equipment categories listed by NHTSA in the ANPRM, following are some illustrative numbers from industry sources:

- Air bags -- The *SAE Worldwide Automotive Supplier Directory (2000)* (hereafter the "SAE Directory") lists 93 North American producers of air bags and components. Of these, there are 19 Tier 1 U.S. manufacturers of original equipment air bags and air bag systems (exclusive of 41 manufacturers of diagnostic modules, propellant canisters, inflators, sensors and "miscellaneous" air bag components). Eleven of the 19 air bag/air bag system manufacturers are small entities. (*Elm Guide*)

- Air bag sensors -- Of the 6 air bag sensor Tier 1 suppliers listed in the *Elm Guide*, 3 are small entities.

- Seat belts/assemblies -- The *SAE Directory* identifies 41 North American seat belt/assembly manufacturers. Sixteen of these companies are Tier 1 original equipment suppliers, of which 11 are small entities. (*Elm Guide.*)

- Fuel tanks -- The *SAE Directory* lists 31 North American manufacturers of fuel tanks. Within this supplier group, there are 13 Tier 1 original equipment producers, of which 7 are small entities. (*Elm Guide.*) MEMA and OESA believe that a more extensive review of the *Elm Guide* would indicate that small entity manufacturers represent a similar, if not higher, percentage of companies producing in the wider range of fuel systems and components.

- Lastly, the Heavy Duty Brake Manufacturers Council, another industry trade group, reports that approximately 30 percent of heavy vehicle brake component producers are small entities.

Again, this is not an exhaustive review of the equipment categories tentatively identified by the agency, but it does provide a good sense of the small business cast of the motor vehicle equipment industry.

b. <u>Suggested focus of rulemaking</u>

At the outset of this regulatory endeavor, MEMA and OESA believe that the agency's primary considerations should be:

(a) whether <u>any</u> category of vehicle equipment manufacturers should be required to report; and

(b) if so, what is the least burdensome and most cost-effective way for NHTSA to determine if an equipment manufacturer reporting regime is workable; so that

(c) a focused set or subset of products is identified which appear to offer the best opportunity of providing useful "early warning" data to the agency.

The answers to these questions will not be found by fashioning a start-up rule which includes producers of, for example, brake or air bag components (or, to use the agency's term, "individual items"), many of which are small businesses.

The first of the issues outlined above was raised by the agency itself in the ANPRM:

> "We are considering whether periodic reporting by some manufacturers of motor vehicle equipment is necessary to fulfill the intent of the TREAD Act."
>
> (66 *Fed. Reg.* At 6535.)

The TREAD Act does not require "periodic reporting." Rather, Section 30166(m) of the Act contains a Congressional direction, couched in the alternative, for manufacturer reporting "periodically or upon request" by the agency. At this early stage and even in future stages of this rulemaking, NHTSA retains the discretion not to require periodic reports of equipment manufacturers as an affirmative duty. In such a case, the agency has the TREAD-enhanced authority to require "early warning" data as part of its inspection, investigative and reporting activities under amended 49 U.S.C. §30166. As the ANPRM notes,

> "Such a requirement [on request] complements NHTSA's pre-TREAD authorities to request safety-related information as part of our investigations."
>
> (66 *Fed. Reg.* at 6542.)

It will come as no surprise to the agency that the motor vehicle equipment industry would like to see how the early reports rule plays out initially with only vehicle manufacturer involvement before NHTSA expands the rule to parts and equipment.[4] Obviously, most of the data reporting categories suggested by NHTSA involve information which can only be derived as a result of motor vehicle activity or incidents, and not merely vehicle equipment separate and apart from a motor vehicle. In the case of original equipment parts, these products are often manufactured

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[4] MEMA and OESA have not considered or addressed possible tire manufacturer reporting in this comment.

according to the specifications of a vehicle manufacturer. Consequently, the performance of such a part is best considered and understood in relation to the vehicle.

MEMA and OESA submit that a debugging, pilot run of this program could well serve the public interest and the Congressional mandate" not [to] impose requirements unduly burdensome . . . , taking into account the manufacturer's cost of complying with such requirements and [NHTSA's] ability to use the information sought in a meaningful manner to assist in the identification of defects related to motor vehicle safety." (49 U.S.C. §30166(m)(4)(D).)

As NHTSA has observed, "many [individual items of original equipment] . . . are not supplied directly to the vehicle manufacturer, but are incorporated into components assembled by a person other than the manufacturer of the part." (66 *Fed. Reg.* at 6535.)

NHTSA correctly points out that,

> "There is a growing trend to packaging individual parts into a single unit or module. . . . In many instances, a defect in a modular component installed as original equipment is far more likely to come to the attention of the vehicle manufacturer than the assembler of the component, or the manufacturers of the component's individual parts."
>
> (66 *Fed. Reg.* at 6535.)

While this ANPRM statement tends to support a vehicle only initial rule, MEMA and OESA suggest that an extension of initial rule reporting obligations to vehicle equipment manufacturers of "systems" and "modules" would not meet the agency's early warning objectives. The types of data NHTSA seeks are in the possession and control of vehicle manufacturers. As a general matter, original equipment producers, including suppliers of "systems," are under contractual commitments to their respective vehicle customers, with the information reporting stream controlled by and considered proprietary to the vehicle manufacturers.

2. A Reporting Requirement, If Applied At All At This Juncture To Motor Vehicle Equipment Producers, Can Achieve NHTSA's Early Warning Objectives With A Limited Number of Streamlined Data Categories

The agency has cast a wide net in the ANPRM with its suggested information categories. Sorting through all these potential data points, one eventually gets to the central and guiding consideration for both the agency and industry.

> "What is the most effective early warning information and least burdensome ways of providing it?"
> (66 *Fed. Reg.* at 6544.)

From the perspective of vehicle equipment manufacturers, few of the potential information components promise a bang for NHTSA's buck.

MEMA and OESA emphasize that the experience of many of their respective members is that claim demand letters and litigation alleging deaths or injuries are often received one or more years after the alleged incidents have occurred. This hardly provides the kind of "early warning" information which NHTSA wants to review. Again, while MEMA and OESA do not believe that early warning reports from equipment manufacturers are necessary at this stage for NHTSA to implement a workable and useful reporting regime, the Associations are nonetheless outlining below reporting approaches for such incidents, since the agency has indicated a priority interest in death and serious injury incident and allegation reports.[5]

(a) **Actual notice of death or serious injury:** All U.S. incidents (for a rule-designated equipment reporting category) where replacement equipment manufacturer management has actual written notice of a death or serious injury alleged or proven to have been caused by a defect in the manufacturer's product, where the defect and the product have been specifically identified — number of incidents to be reported to NHTSA within thirty calendar days after actual written notice of any such incident is received.[6] This interval is recommended to permit confirming factual development and internal review.

(b) **Claims of death or serious injury:** In the absence of actual notice, but with the same replacement equipment manufacturer and U.S. application as in (a),

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5 MEMA and OESA note that the TREAD Act already requires manufacturer reporting of a "safety recall or other safety campaign in a foreign country." 49 U.S.C. §30166(l). The Associations suggest that this can be accomplished by submission of reports similar to those required under 49 CFR Part 573. With this coverage of foreign safety campaigns, the early warning rule can and should be limited to U.S. incidents.

Secondly, since in any event whatever claims and other data of interest to the agency would typically be available to original equipment manufacturers only if provided to them by their vehicle manufacturer customers, MEMA and OESA see no reason for this duplication of report information. Accordingly, the approaches outlined here involve potential reporting of replacement equipment incidents only.

6 MEMA and OESA are not in this comment recommending incident threshold levels, although the Associations reserve their right to do so at a later stage of this rulemaking proceeding.

Additionally, the Associations cannot at this time recommend a definition of "serious injury." MEMA and OESA have been advised by their members that the Abbreviated Injury Scale (AIS) is a very complex system, prone to a range of interpretations which would be difficult for an equipment manufacturer's clerical staff to understand and apply.

receipt of written demands, claim letters or notice of litigation alleging death or serious injury caused by a defect in the manufacturer's product, where the defect and the product have been specifically identified — number of incidents to be reported to NHTSA within thirty calendar days of manufacturer receipt of death or serious injury claims. This interval is recommended to allow for claims receipt, compilation and assessment.

MEMA and OESA believe that other possible reporting categories discussed in the ANPRM, as applied to the vehicle equipment industry, offer even less promise of providing early warning data to NHTSA.

Warranty claims: Original equipment manufacturers typically do not have access to warranty data on products which they supply to vehicle producers; warranty information is received and maintained by the vehicle manufacturer(s) involved. At all events, warranty reporting systems are essentially labor payment methods which are not a reliable means of safety defect information or trend detection. Most equipment manufacturers, both small entities and large national suppliers, do not have the volume of warranty claims to justify the investment in elaborate data tracking systems. See also, the discussion of standardized warranty codes later in this comment.

Property damage: This type of information is normally only available through reporting channels to motor vehicle manufacturers. The industry's vehicle equipment segment does not in the usual course maintain special records--and certainly not "aggregated statistical information"--relating to property damage.

Customer communications: The member constituency of MEMA and OESA believe that much of the customer satisfaction campaign, customer advisories, "recalls, or other [data] involving the repair or replacement of . . . items of motor vehicle equipment" is already being provided to the agency pursuant to 49 CFR § 573.8 ("notices, bulletins and other communications"). Even though the applicable TREAD provision, Section 30166(m)(3)(A)(ii), calls for information beyond the §573.8 ("any defect") coverage, as a practical matter manufacturers are already submitting much of this type of TREAD customer data under §573.8 to NHTSA.

MEMA and OESA strongly oppose any reporting requirements related to internal investigations, running production changes or service part changes.

Internal investigations: Internal reviews are undertaken by responsible automotive products companies for a variety of reasons (such as process improvement, cost reduction, etc.), including safety concerns. If such an investigation reveals a safety defect in a product, that company has a statutory obligation to report the matter to NHTSA and campaign the defective product. The agency's suggestion that it might want, at some stage of this process, to be a party to the internal review and pre-decisional actions suggests a level of distrust which, candidly, the industry finds offensive and an unwarranted intrusion.

NHTSA's proposed involvement in the "internal investigation" process would, without question, have a chilling effect on the incentive of manufacturers to undertake, or conduct in depth, such reviews without a privilege shield (see below).

This kind of proprietary review is also initiated, on occasion, to assess potential product liability exposure. Were this information turned over to NHTSA under the early warning reporting requirements, a manufacturer could be seriously and unjustifiably compromised. NHTSA has the discretion under Section 30166(m)(4)(C) of TREAD to determine whether "the disclosure of such [early warning report] information will assist in carrying out" its investigative and enforcement functions. The agency does "not interpret [this provision] . . . as affecting the current policies and practices applicable to the disclosure of information to the public." (66 *Fed. Reg.* at 6544.) In the ANPRM, this statement, hardly cause for comfort to the industry, is juxtaposed with President Clinton's charge to NHTSA as he signed the TREAD Act in November of 2000, "directing us 'to implement the information disclosure requirements of the [TREAD] Act in a manner that assures maximum public availability of information.'" (*Id.*)[7]

As NHTSA is undoubtedly aware from its experience with internal review data in agency investigations, some of these reviews are conducted by or under the direction of company counsel, under claim of privilege. If the agency incorporates an "internal investigation" component in its early reports rule, it can reasonably anticipate that an increasing number of these reviews will be conducted under an asserted privilege shield.

Production and service part changes: With respect to running production change data, MEMA and OESA submit that this information, much like "aggregated statistical data," will be of little early warning benefit to the agency; indeed, this potential data category carries an effective return quotient that is inversely proportional to the sizable burdens which manufacturers would have to shoulder in collecting and submitting such data, and massive amounts of information which NHTSA would have to cull through.

Any given vehicle equipment manufacturer will have literally thousands of product change requests every year for a wide range of reasons. For example, some such production changes are merely cosmetic, or to change an instruction to conform to the way parts are actually being produced. Others may involve cost reduction activities or changes in component suppliers or sub-suppliers. Very few such changes have safety implications. Any changes made to address a safety

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[7] MEMA and OESA construe the TREAD Act as providing that all early warning reports data are to be treated as confidential unless and until NHTSA makes the requisite statutory determination to disclose. TREAD, except for the foregoing disclosure qualification, states that "none of the information collected pursuant to the final rule . . . shall be disclosed. . . ." 49 U.S.C. §30166(m)(4)(C). Short of an agency determination to disclose, the Associations submit that public access to early warning reports materials can only be considered under the processes of the Freedom of Information Act, 5 U.S.C. §552.

defect would be the result of a company's good faith determination that such a safety defect exists, and with consequent reporting obligations to NHTSA under 49 CFR Part 573.

Both the production and service part change processes are subject to a multidisciplinary review approach which, in many companies, is further subject to periodic audits as part of QS-9000 and ISO-9000 systems. In the case of an original equipment manufacturer, all QS-9000, ISO-9000 and similar quality standard data, including product changes, must be reported to and validated with the vehicle manufacturer(s) supplied.

Further, service part changeout data has in the past been reported to NHTSA by many vehicle equipment manufacturers under the agency's §573.8 regulation. Certainly this is required for parts changes which involve manufacturer "product improvement" and other communications to more than one customer, "regarding any defect . . . failure or malfunction . . . performance, or any flaw or unintended deviation from design specifications. . ." in the changeout part. MEMA and OESA believe, accordingly, that NHTSA is already getting--or has the current means to obtain--the service part information it needs for early warning detection of potential safety defects.

Field reports: This term, familiar to NHTSA in its investigative settings, nonetheless has a variety of meanings in the industry. Oftentimes, such information--even "field" data involving competitive issues--is anecdotal and/or based on rumor. Whatever information is field generated is frequently delayed in transmission and must be screened (often independently substantiated) for accuracy.

With respect to original equipment manufacturers, field information generally is given directly to the vehicle manufacturer, and not its supplier. Vehicle manufacturers rely on their own professional (technical) staff personnel in the field to provide such reports. While aftermarket manufacturers do act upon safety defect data identified by field sources, they assert that sorting through the massive amounts of information coming from the marketplace for bits of arguably safety-relevant data would present very substantial cost burdens and likely require additional support personnel. Few of these companies presently have the conformed external and internal data processing systems to begin even to consider collecting and managing "field" information for NHTSA's early warning safety purposes.

Manufacturing plant quality reports: Quality reports relate to all aspects of manufacturing operations, from raw material intake, sorting and storage of inventory, to machining and processing, vision systems, inspection, packaging, etc. For original equipment producers, deviations in quality reports must be reported to vehicle manufacturers under QS-9000. Such deviations serve to flag those parts which are sent to specialized engineering personnel to evaluate the performance of the part within a specific environment. Throughout industry, engineers or groups of engineers with expertise in minute areas of vehicle components make these product performance judgments on thousands of part deviations. Monitoring this process and any

resulting reports on it would require a substantial number of NHTSA engineers to evaluate ever a portion of this extensive activity.

Website access: MEMA and OESA members strongly oppose this suggested intrusion into their internal websites. Much of the information found there is highly proprietary, such that its compromise through agency information leaks or placement in a public docket could have catastrophic competitive consequences. This Big Brother approach to agency monitoring of the industry is draconian in the extreme. Further, it would likely compromise confidential information without giving a manufacturer the opportunity to protect its proprietary data under the agency's Confidential Business Information Regulation, 49 CFR Part 512.

Standardized warranty codes: In cases when warranty parts are returned to a manufacturer, it has been noted that only a small percentage are accurately coded. As well, a significant percentage of returned parts are determined to be fully operative and free of defects.

Another typical experience with warranty codes results from "gaming the system." A dealer or other repair facility will list a warranty code which it knows will result in manufacturer payment for a specific type of problem, whether or not that warranty code is the correct one.

Summing up, standardizing warranty code numbers, which would involve creating a system that does not presently exist, will not provide much in the way of accurate, useful early warning data.

3. The Reporting Methodology Available To NHTSA Is Conditioned By The TREAD Act's Early Warning Provisions Regarding Derivation of Information, Information In Possession Of Manufacturer, And Burdensome Requirements

The agency's ANPRM expresses the "view . . . that manufacturers must do more than merely provide raw information and data." (At 6542.) Leaning heavily on one aspect of the meaning of "derived" information as used in the TREAD law, the agency contends that,

> "The aspects of reasoning, deduction, and inference in the definition of 'derive,' in our view, authorize a rule that requires a manufacturer to process, organize, and to some degree analyze the raw data and information it has, so that meaningful information is provided."
>
> (*Id.*)

While one meaning of derive is to "infer or deduce," other meanings of this word are "to take or receive [or] . . . obtain from a specified source" (*Webster's Ninth New Collegiate Dictionary* 342 (1990)), in the case at hand, "from foreign and domestic sources. . . ." TREAD Section 30166(m)(3)(A).

MEMA and OESA submit that the obligation to "analyze" data thus obtained or received by manufacturers from foreign or domestic reporting sources rests upon NHTSA, and not the industry. While there may be a need for processing and organization of such data by manufacturers into, for example, a standardized spreadsheet format, any requirement for manufacturers "to some degree [to] analyze" this submitted information is outside the boundaries of TREAD.

NHTSA should not require the industry to provide data analysis – let alone a "one size fits all" analysis method – of early warning report data provided to the agency. Equipment manufacturers will, however, continue to conduct internal reviews and analysis of safety-related data in ways best suited to their respective concerns and resources.

Engagement in substantive analysis is, in effect, the creation of new information, in the category of "records respecting information not in the possession of the manufacturer," as precluded by Section 30166(m)(4)(B). Further, the imposition of an analytical reporting component would, in the view of MEMA and OESA, constitute an "unduly burdensome" requirement for manufacturers, contrary to Section 30166(b)(4)(D) of the TREAD Act. Spreadsheets or other types of summary reports are understandable needs of NHTSA from manufacturers; findings, conclusions and other types of analytical activities are outside TREAD's reporting ambit and carry a cost burden which the agency must incur if it seeks "the aspects of reasoning, deduction, and inference" from the data it receives from manufacturers.

4. Definitions Of The Terms "Claim" And "Substantially Similar" Should Be Tailored To The Reporting Context To Which They Are Applicable

The TREAD Act's early warning reporting provisions limit the application of report data on "claims" (and a correlative term, "incidents") to matters (whether such information is received from foreign or domestic sources) involving deaths or serious injuries said to be caused by a product defect. Property damage is only required to be reported to NHTSA, if at all, as "aggregate statistical data" rather than on a "claim" basis. 49 U.S.C. §30166(m)(3)(A)(i), (C).

MEMA and OESA take strong issue with the suggestion that manufacturers should be saddled with the transcendent task of discerning what is "an implicit allegation" that rises to the level of a claim. (66 *Fed. Reg.* at 6538.) That kind of costly and futile exercise promises a complexity of construction unintended by TREAD.

On the basis of the foregoing, MEMA and OESA recommend the following definition of "claim," as applied to motor vehicle equipment manufacturer early warning reporting obligations:

> "*Claim* means a written demand, assertion or notice of litigation served on a motor vehicle equipment manufacturer from a United States source, expressly alleging that a death or serious injury has

> been caused by a specifically identified defect in the manufacturer's motor vehicle equipment."

NHTSA also invites recommendations with respect to the definition of the term "substantially similar," as contained in Section 30166(m)(3)(C).

MEMA and OESA respond to the agency's ANPRM inquiry (at 6541) that a definition of "substantially similar" motor vehicle equipment will indeed "be different with respect to individual parts, component parts, assemblies and systems." Here, it is clear that a single definition simply will not work.

Unfortunately, the agency's proposal (at 6541) that perhaps this term "should . . . be restricted to replacement equipment for substantially similar motor vehicles" circles back to the same need for a definition of "substantially similar" and disregards critical distinctions in component applications and operations.

For example, a bolt, having a given part number, may perform in substantially dissimilar ways, depending on how and where it is used. If used in a critical safety application, such as a seat belt anchorage, the application may require a higher standard than the same bolt used in a less significant application.

The vehicle environment may also dictate whether the same part performs in substantially similar or dissimilar ways. For example, an electronic part may perform well in one vehicle where the temperature in the engine compartment is low; where it is somewhat protected from water splashing in the environment; where it is mounted solidly to the vehicle; where vibration and/or natural frequency does not affect it, etc. Yet the same part or component in a vehicle where one or more of these conditions is present may fail. Often these conditions are beyond a supplier's control and can only be judged by the vehicle manufacturer.

On the other hand, components dissimilar in appearance or function can be substantially similar in performance characteristics. For example, several electronic control modules, having substantially different functions, may be susceptible to similar failure modes if one of the components that is common to all were to have a defect.

5. The Nature Of The Raw Data And Allegation Materials Provided To NHTSA Under Early Warning Reporting Requires Strengthened Data Protection Measures

Related to the issue of manufacturer cost burdens is the very real concern which industry has about the agency's ability to keep what likely will be a large and continuing influx of "raw data" and related, unconfirmed information out of the public record. Leaks or release of this kind of material could severely and unjustifiably harm a manufacturer and its good will with the public, in the *Alice in Wonderland* tradition of the Red Queen's "sentence first, trial later" edict.

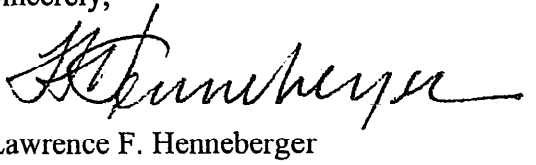
As well, MEMA and OESA believe that this kind of "free association" data should not be allowed to serve as fodder for the plaintiffs' bar, by putting it "in play" in public dockets. MEMA and OESA respectfully submit that NHTSA has a fiduciary responsibility to the public it serves to assure that data placed in its public record is accurate information which, if necessary, should be investigated and confirmed prior to release.

Lastly, the Associations inquire how NHTSA intends to comply with the requirements of the Federal Privacy Act, 5 U.S.C. §552a. For example, some of the reported information (death, serious injury, other claims data) may include references to individuals, as well as other personal or sensitive information. The task of purging such data of personal identifiers will assuredly be a challenging one for the agency.

Conclusion

Fashioning a reports rule to accommodate NHTSA's collection and review capabilities and the industry's cost burdens and other compliance concerns is indeed a challenging task. MEMA and OESA are prepared to work with the agency as it seeks to achieve the proper regulatory balance.

Sincerely,



Lawrence F. Henneberger